

104TH CONGRESS
2D SESSION

H. R. 4233

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 30, 1996

Received

AN ACT

To provide for appropriate implementation of the Metric Conversion Act of 1975 in Federal construction projects, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Savings in Construc-
3 tion Act of 1996”.

4 **SEC. 2. FINDINGS.**

5 The Congress finds the following:

6 (1) The Metric Conversion Act of 1975 was en-
7 acted in order to set forth the policy of the United
8 States to convert to the metric system. Section 3 of
9 that Act requires that each Federal agency use the
10 metric system of measurements in its procurement,
11 grants, and other business-related activities, unless
12 that use is likely to cause significant cost or loss of
13 markets to United States firms, such as when for-
14 eign competitors are producing competing products
15 in non-metric units.

16 (2) In accordance with that Act and Executive
17 Order 12770, of July 25, 1991, Federal agencies in-
18 creasingly construct new Federal buildings in round
19 metric dimensions. As a result, companies that wish
20 to bid on Federal construction projects increasingly
21 are asked to supply materials or products in round
22 metric dimensions.

23 (3) While the Metric Conversion Act of 1975
24 currently provides an exemption to metric usage
25 when impractical or when such usage will cause eco-
26 nomic inefficiencies, amendments are warranted to

1 ensure that the use of specific metric components in
2 metric construction projects do not increase the cost
3 of Federal buildings to the taxpayers.

4 **SEC. 3. DEFINITIONS.**

5 Section 4 of the Metric Conversion Act of 1975 (15
6 U.S.C. 205c) is amended—

7 (1) by striking “and” at the end of paragraph
8 (3);

9 (2) by striking “Commerce.” in paragraph (4)
10 and inserting “Commerce;”; and

11 (3) by inserting after paragraph (4) the follow-
12 ing:

13 “(5) ‘full and open competition’ has the same
14 meaning as defined in section 403(6) of title 41,
15 United States Code;

16 “(6) ‘total installed price’ means the price of
17 purchasing a product or material, trimming or oth-
18 erwise altering some or all of that product or mate-
19 rial, if necessary to fit with other building compo-
20 nents, and then installing that product or material
21 into a Federal facility;

22 “(7) ‘hard-metric’ means measurement, design,
23 and manufacture using the metric system of meas-
24 urement, but does not include measurement, design,
25 and manufacture using English system measurement

1 units which are subsequently reexpressed in the met-
2 ric system of measurement;

3 “(8) ‘cost or pricing data or price analysis’ has
4 the meaning given such terms in section 304A of the
5 Federal Property and Administrative Services Act of
6 1949 (41 U.S.C. 254b); and

7 “(9) ‘Federal facility’ means any public building
8 (as defined under section 13 of the Public Buildings
9 Act of 1959 (40 U.S.C. 612) and shall include any
10 Federal building or construction project—

11 “(A) on lands in the public domain;

12 “(B) on lands used in connection with
13 Federal programs for agriculture research,
14 recreation, and conservation programs;

15 “(C) on or used in connection with river,
16 harbor, flood control, reclamation, or power
17 projects;

18 “(D) on or used in connection with hous-
19 ing and residential projects;

20 “(E) on military installations (including
21 any fort, camp, post, naval training station, air-
22 field, proving ground, military supply depot,
23 military school, or any similar facility of the
24 Department of Defense);

1 “(F) on installations of the Department of
 2 Veteran Affairs used for hospital or domiciliary
 3 purposes; or

4 “(G) on lands used in connection with
 5 Federal prisons,

6 but does not include (i) any Federal Building or con-
 7 struction project the exclusion of which the Presi-
 8 dent deems to be justified in the public interest, or
 9 (ii) any construction project or building owned or
 10 controlled by a State government, local government,
 11 Indian tribe, or any private entity.”.

12 **SEC. 4. IMPLEMENTATION IN ACQUISITION OF FEDERAL**
 13 **FACILITIES.**

14 (a) The Metric Conversion Act of 1975 (15 U.S.C.
 15 205 et sec.) is amended by inserting after section 13 the
 16 following new section:

17 **“SEC. 14. IMPLEMENTATION IN ACQUISITION OF CON-**
 18 **STRUCTION SERVICES AND MATERIALS FOR**
 19 **FEDERAL FACILITIES.**

20 “(a) IN GENERAL.—Construction services and mate-
 21 rials for Federal facilities shall be procured in accordance
 22 with the policies and procedures set forth in chapter 137
 23 of title 10, United States Code, section 2377 of title 10,
 24 United States Code, title III of the Federal Property and
 25 Administrative Services Act of 1949 (41 U.S.C. 251 et

1 seq.), and section 3(2) of this Act. Determination of a de-
2 sign method shall be based upon preliminary market re-
3 search as required under section 2377(c) of title 10, Unit-
4 ed States Code, and section 314B(c) of the Federal Prop-
5 erty and Administrative Services Act of 1949 (41 U.S.C.
6 264b(c)). If the requirements of this Act conflict with the
7 provisions of section 2377 of title 10, United States Code,
8 or section 314B of the Federal Property and Administra-
9 tive Services Act of 1949, then the provisions of 2377 or
10 314B shall take precedence.

11 “(b) CONCRETE MASONRY UNITS.—In carrying out
12 the policy set forth in section 3 (with particular emphasis
13 on the policy set forth in paragraph (2) of that section)
14 a Federal agency may require that specifications for the
15 acquisition of structures or systems of concrete masonry
16 be expressed under the metric system of measurement, but
17 may not incorporate specifications, that can only be satis-
18 fied by hard-metric versions of concrete masonry units, in
19 a solicitation for design or construction of a Federal facil-
20 ity within the United States or its territories, or a portion
21 of said Federal facility, unless the head of the agency de-
22 termines in writing that—

23 “(1) hard-metric specifications are necessary in
24 a contract for the repair or replacement of parts of
25 Federal facilities in existence or under construction

1 upon the effective date of the Savings in Construc-
2 tion Act of 1996; or

3 “(2) the following 2 criteria are met:

4 “(A) the application requires hard-metric
5 concrete masonry units to coordinate dimen-
6 sionally into 100 millimeter building modules;
7 and

8 “(B) the total installed price of hard-met-
9 ric concrete masonry units is estimated to be
10 equal to or less than the total installed price of
11 using non-hard-metric concrete masonry units.
12 Total installed price estimates shall be based, to
13 the extent available, on cost or pricing data or
14 price analysis, using actual hard-metric and
15 non-hard-metric offers received for comparable
16 existing projects. The head of the agency shall
17 include in the writing required in this sub-
18 section an explanation of the factors used to de-
19 velop the price estimates.

20 “(c) RECESSED LIGHTING FIXTURES.—In carrying
21 out the policy set forth in section 3 (with particular em-
22 phasis on the policy set forth in paragraph (2) of that
23 section) a Federal agency may require that specifications
24 for the acquisition of structures or systems of recessed
25 lighting fixtures be expressed under the metric system of

1 measurement, but may not incorporate specifications, that
2 can only be satisfied by hard-metric versions of recessed
3 lighting fixtures, in a solicitation for design or construc-
4 tion of a Federal facility within the United States or its
5 territories unless the head of the agency determines in
6 writing that—

7 “(1) the predominant voluntary industry con-
8 sensus standards include the use of hard-metric for
9 the items specified; or

10 “(2) hard-metric specifications are necessary in
11 a contract for the repair or replacement of parts of
12 Federal facilities in existence or under construction
13 upon the effective date of the Savings in Construc-
14 tion Act of 1996; or

15 “(3) the following 2 criteria are met:

16 “(A) the application requires hard-metric
17 recessed lighting fixtures to coordinate dimen-
18 sionally into 100 millimeter building modules;
19 and

20 “(B) the total installed price of hard-met-
21 ric recessed lighting fixtures is estimated to be
22 equal to or less than the total installed price of
23 using non-hard-metric recessed lighting fix-
24 tures. Total installed price estimates shall be
25 based, to the extent available, on cost or pricing

1 data or price analysis, using actual hard-metric
2 and non-hard-metric offers received for com-
3 parable existing projects. The head of the agen-
4 cy shall include in the writing required in this
5 subsection an explanation of the factors used to
6 develop the price estimates.

7 “(d) LIMITATION.—The provisions of subsections (b)
8 and (c) of this section shall not apply to Federal contracts
9 to acquire construction products for the construction of
10 facilities outside of the United States and its territories.

11 “(e) EXPIRATION.—The provisions contained in sub-
12 sections (b) and (c) of this section shall expire 10 years
13 from the effective date of the Savings in Construction Act
14 of 1996.”.

15 **SEC. 5. OMBUDSMAN.**

16 Section 14 of the Metric Conversion Act of 1975, as
17 added by section 4 of this Act, is further amended by add-
18 ing at the end the following new subsection:

19 “(f) AGENCY OMBUDSMAN.—(1) The head of each
20 executive agency that awards construction contracts with-
21 in the United States and its territories shall designate a
22 senior agency official to serve as a construction
23 metrication ombudsman who shall be responsible for re-
24 viewing and responding to complaints from prospective

1 bidders, subcontractors, suppliers, or their designated rep-
2 resentatives related to—

3 “(A) guidance or regulations issued by the
4 agency on the use of the metric system of measure-
5 ment in contracts for the construction of Federal
6 buildings; and

7 “(B) the use of the metric system of measure-
8 ment for services and materials required for incorpo-
9 ration in individual projects to construct Federal
10 buildings.

11 The construction metrication ombudsman shall be inde-
12 pendent of the contracting officer for construction con-
13 tracts.

14 “(2) The ombudsman shall be responsible for ensur-
15 ing that the agency is not implementing the metric system
16 of measurement in a manner that is impractical or is likely
17 to cause significant inefficiencies or loss of markets to
18 United States firms in violation of the policy stated in sec-
19 tion 3(2), or is otherwise inconsistent with guidance issued
20 by the Secretary of Commerce in consultation with the
21 Interagency Council on Metric Policy while ensuring that
22 the goals of the Metric Conversion Act of 1975 are ob-
23 served.

24 “(3) The ombudsman shall respond to each complaint
25 in writing within 60 days and make a recommendation to

1 the head of the executive agency for an appropriate resolu-
2 tion thereto. In such a recommendation, the ombudsman
3 shall consider—

4 “(A) whether the agency is adequately applying
5 the policies and procedures in this section;

6 “(B) whether the availability of hard-metric
7 products and services from United States firms is
8 sufficient to ensure full and open competition; and

9 “(C) the total installed price to the Federal
10 Government.

11 “(4) After the head of the agency has rendered a de-
12 cision regarding a recommendation of the ombudsman, the
13 ombudsman shall be responsible for communicating the
14 decision to all appropriate policy, design, planning, pro-
15 curement, and notifying personnel in the agency. The om-
16 budsman shall conduct appropriate monitoring as required
17 to ensure the decision is implemented, and may submit
18 further recommendations, as needed. The head of the
19 agency’s decision on the ombudsman’s recommendations,
20 and any supporting documentation, shall be provided to
21 affected parties and made available to the public in a time-
22 ly manner.

23 “(5) Nothing in this section shall be construed to su-
24 persede the bid protest process established under sub-
25 chapter V of chapter 35 of title 31, United States Code.”.

1 **SEC. 6. EFFECTIVE DATE AND MISCELLANEOUS PROVI-**
2 **SIONS.**

3 (a) **EFFECTIVE DATE.**—This Act and the amend-
4 ments made by this Act shall take effect 90 days after
5 the date of enactment of this Act.

6 (b) **SAVINGS PROVISIONS.**—This Act shall not apply
7 to contracts awarded and solicitations issued on or before
8 the effective date of this Act, unless the head of a Federal
9 agency makes a written determination in his or her sole
10 discretion that it would be in the public interest to apply
11 one or more provisions of this Act or its amendments to
12 these existing contracts or solicitations.

Passed the House of Representatives September 28,
1996.

Attest:

ROBIN H. CARLE,
Clerk.